APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNIROYAL GOODRICH TIRE COMPANY,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 90 C 2370
	)	
	)	
MUTUAL TRADING CORPORATION, MOHAMMED SHAFIQ, JOHN P. HAUPER, and RICHARD K. GERMANO,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

On May 27, 1994, after a four-week jury trial and four years of litigation, I entered judgment in Uniroyal Goodrich Tire Company's ("Uniroyal") favor. Judgment as a matter of law was entered for plaintiff on Counts VII and VIII. In addition, I entered judgment on the jury's verdict for claims under 18 U.S.C. § 1961, *et seq.* ("RICO"), under the Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois Consumer Fraud Act"), 815 ILCS 505, common law fraud, payment on account of goods sold and delivered, breach of fiduciary duty, intentional interference with contractual relations, and on the Mr. Shafiq's personal guarantee of Mutual Trading Corporation's obligations. Uniroyal seeks to recover its attorneys' fees and nontaxable expenses pursuant to Federal Rule of Civil Procedure 54(d)(2), 18 U.S.C. § 1964(c), 815 ILCS 505/10a(c), and under Mr. Shafiq's personal guaranty. Uniroyal also seeks to recover the costs of litigation tax-

able under Federal Rule of Civil Procedure 54(d) and 28 U.S.C. § 1920.

Attorneys' Fees

A plaintiff who prevails on a RICO claim is entitled to recover the cost of the lawsuit, including a reasonable attorneys' fee. 18 U.S.C. § 1964(c). In addition, a plaintiff who prevails under the Illinois Consumer Fraud Act is entitled to attorney's fees. 815 ILCS 505/10a(c). Generally, when a plaintiff is entitled to attorneys' fees by statute on one claim and prevails on other claims arising out of the same common nucleus of facts, the plaintiff is entitled to recover fees on all of the work done on the related claims. *See Hensley v. Eckerhart*, 461 U.S. 424, 435, 103 S. Ct. 1993, 76 L.Ed.2d 40 (1983); *Rosario v. Livaditis*, 963 F.2d 1013, 1021 (7th Cir. 1992) (citing *Hensley v. Eckerhart* as support for awarding attorneys' fees arising from the pursuit of two claims to plaintiff who was successful in its claim under the Illinois Consumer Fraud Act but unsuccessful on RICO claim even though the RICO claim absorbed most of the litigation effort but both claims were based on a common core of facts and related legal theories); *Bingham v. Zolt*, 823 F. Supp. 1126, 1137 n.9 (S.D.N.Y. 1993) (awarding attorneys' fees for entire litigation including non-RICO claims because they involved common nucleus of facts and were based on related legal theories). Here, all of Uniroyal's claims were based upon related legal theories and on a common nucleus of facts generally revolving around the defendants' efforts to defraud Uniroyal. The plaintiff won a jury verdict on every claim submitted to the jury and two counts as a matter of law. There can be no doubt that it is the prevailing party in this litigation. Therefore, it is entitled to an award of attorneys' fees as well as costs.

Defendants make several attacks on Uniroyal's fee petition. However, defendants do not assail the amount charged per hour by the various attorneys who worked on Uniroyal's behalf over the course of the litigation. After comparing the rates to those charged by other attorneys in the Chicago area of equivalent expertise and experience, I find that they are eminently reasonable.

Defendants contend that Uniroyal should not be able to receive attorneys' fees where there has been a duplication of effort and unnecessary time spent by Uniroyal's attorneys. Defendants cite to instances where more than one attorney for Uniroyal was present at court appearances, depositions and trial. With regard to court appearances, defendants cite to three occasions where two attorneys appeared for Uniroyal, two occasions when three appeared and one occasion where four appeared. I agree with the defendants that generally speaking only one attorney from a side need be present at a status hearing. Here, however, in litigation encompassing four years and 459 docket entries, the fact that on these few occasions it was necessary for more than one attorney to be present to apprise the court of the case's status is not particularly surprising or inappropriate.

With regard to multiple attorneys present to argue motions, this objection is overruled. In a complex cases such as this, it would be unreasonable to assume that one attorney would always be able to coordinate the required documentation and legal materials required to present a motion. In a similar vein, the presence of multiple attorneys at settlement, pretrial, and jury conferences is to be expected in this sort of a case. In a complex case, involving large sums of money it is only natural that the several attorneys responsible for differing aspects of the case be present at these critical junctures

to insure that the resolutions made at those conferences are adequately represent the client's litigation position.

Defendants' contention that having three attorneys and a legal assistant present at trial is a gross duplication of effort is also overruled. The trial in this case lasted 15 days. More often than not there was more than one witness per day with Uniroyal attorneys examining 26 witnesses in total. During the course of the trial, there were a number of motions argued by the attorneys. This case was highly document intensive with 1,372 exhibits admitted into evidence. Considering all of this, it was not at all unreasonable to have three attorneys and a legal assistant participating in the trial.

Defendants' assertion that the accumulation of 8,500 hours of attorney time is also without merit for many of the same reasons. This case was filed on April 24, 1990. The last docket entry is dated September 16, 1994, a span of over four years. Again, the trial lasted 15 days. Uniroyal's proposed exhibit list contained 1,082 documents and defendants' list contained 740. Discovery involved retrieving documents and other evidence from Africa and cities in the United States other than Chicago.

Defendants' objection to the amount of time spent on the pretrial order is not well taken for the reasons discussed above. Likewise, its objections to the amount of time spent reviewing the privileged document list, drafting and responding to interrogatories and drafting motions *in limine* are rejected. With respect to preparing for and taking Mr. Germano's deposition, Mr. Germano was a critical figure in the defendants' fraudulent scheme. He was deposed on four nonconsecutive days, all of which required the review of many documents. Thus, the 100 hours spent preparing for and taking his deposition was not excessive.

The fact that Uniroyal had three attorneys travel from Chicago to Akron to aid in the defense of five Uniroyal employees is not excessively duplicative in light of the facts. These depositions were taken on short notice and it was necessary to prepare for them in a short period of time. Thus, three of Uniroyal's attorneys went to prepare the witnesses. Defendants' objection to Janice E. Crossland's presence at each of the depositions is baseless. She was present as Uniroyal's corporate representative and, thus, her presence is irrelevant to the fee petition.

The fact that the attorney hours itemized on each monthly bill do not equal the amount totaled in the monthly summaries is not grounds for objection. The bills were redacted, thus removing amounts for which Uniroyal is not seeking fees. The monthly summaries reflect the amounts Uniroyal has actually been billed. Uniroyal is seeking reimbursement only for the amounts that appear in each itemized bill, a lesser amount. Also, Uniroyal is not seeking reimbursement for amounts it has paid for attorney meals. Those amounts do appear in the monthly bills but have not been included in the total.

Defendants' contention that Uniroyal has not adequately apportioned its expert witness fees between successful and unsuccessful claims is baseless. Uniroyal was successful on every count. The expert testimony was reasonably necessary for Uniroyal to prove its case. Therefore, Uniroyal is entitled to its expert witness fees.[1]

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[1] Defendants do not raise the issue of whether Uniroyal is entitled to expert witness fees under 18 U.S.C. § 1964(c). The statute states that the plaintiff is entitled to recover "the cost of the suit, including a reasonable attorney's fee." *Id.* Defendants have cited no authority indicating that expert witness

(continued...)

Uniroyal is entitled to $1,402,065.76 in attorneys' fees.[2]

Costs

When awarding costs, the court must determine that the costs sought are allowable and that they are reasonable, "both in amount and necessity to the litigation." *Weihaupt v. American Medical Ass'n*, 874 F.2d 419, 430 (7th Cir. 1989). However, "[t]he losing party has the burden to affirmatively show that the prevailing party is not entitled to costs." *M.T. Bonk Co. v. Milton Bradley Co.*, 945 F.2d 1404, 1409 (7th Cir. 1991). 28 U.S.C. § 1920 allows the court to assess costs where the deposition for:

(1) Fees of the clerk and marshall;

(2) Fees of the court reporter for all or part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of papers necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title;

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[1] (...continued)
fees are not included as a cost of the suit, and I find that they are recoverable under the statute. *See Hertz Corp. v. Caulfield*, 796 F. Supp. 225, 230 (E.D. La. 1992); *Abell v. Potmac Ins. Co.*, 858 F.2d 1104 (5th Cir. 1988), *vacated on other grounds*, *Fryer v. Abell*, 492 U.S. 914 (1989) (relying on rule used in civil rights cases that expert fees are allowed as part of attorneys' fees); *Cf. Heiar v. Crawford County Wisconsin*, 746 F.2d 1190, 1203 (7th Cir. 1984), *cert. denied*, 472 U.S. 1027 (1985) (allowing expert witness fees under ADEA as part of attorneys' fees).

[2] This is the amount requested plus $4,147.52 in computerized legal research fees that are appropriate as attorneys' fees but were improperly requested in the Bill of Costs. *See* discussion below.

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A. Court Reporter Costs

Court reporter costs for depositions are recoverable under 28 U.S.C. § 1920(2). Uniroyal identified 46 witnesses that might potentially be called at trial. Defendants identified 29. The parties each designated ten depositions to be read at trial. In addition, there were a substantial number of former employees from in and out of state who may or may not have been available to testify at trial. These factors, combined with the long passage of time between the first depositions and trial, makes it clear that transcripts of these depositions were necessary.

Defendants' objection to charges for deposition transcripts for Mutual Trading Corporation's officers and agents alleging that they "were clearly for discovery and trial preparation" purposes is overruled. Def.'s Objections to Pl.'s Bill of Costs at 13. "[C]harges for deposition transcripts may be taxed as costs where the deposition appeared to be reasonably necessary in light of the particular situation at the time it was taken, even if the witness was not called at trial or the deposition used at trial, and even if the deposition was for discovery purposes only," *E.E.O.C. v. Sears Roebuck and Co.*, 114 F.R.D. 615, 622 (N.D. Ill. 1987) (citations omitted), provided that it is not merely necessary for the convenience of the attorney or purely investigative. *Hudson v. Nabisco Brands, Inc.*, 758 F.2d 1237, 1243 (7th Cir. 1985).

Here, defendants have admitted that these transcripts were used for trial preparation. Furthermore, defendants

have failed to identify specifically which transcripts were allegedly unnecessary, nor presented some explanation as to why they were unnecessary. *See Gustovich v. AT&T Communications, Inc.*, 1991 U.S. Dist. LEXIS 17887 (N.D. Ill. 1991) (broad assertions that depositions were unnecessary are insufficient to persuade the court to deny costs). I find that the transcripts were necessary for effective trial preparation and for preparing various motions.

Uniroyal is not entitled to recover the charge for ASCII diskettes of each transcript. This is merely for the attorney's convenience. Each diskette cost $45 and Uniroyal has included charges for 29 depositions. Therefore, the total costs allowable will be reduced by $1,305.00.

Defendants object to an award for expedited transcript costs during the trial. Because of the complexity of the issues, the length of the trial, the large size of Uniroyal's claim, and the number of witnesses, expedited transcripts were reasonably necessary. *See Independence Tube Corp. v. Copperweld Corp.*, 543 F. Supp. 706, 719 (N.D. Ill. 1982), *aff'd*, 691 F.2d 310 (1982) *rev'd on other grounds*, 467 U.S. 752 (1984); *E.E.O.C. v. Sears Roebuck & Co., supra*, 114 F.R.D. at 622. However, as with the depositions, ASCII diskettes merely make using the transcripts more convenient for the attorney and, therefore, Uniroyal is not entitled to an award of costs for those charges. ASCII diskette charges for the trial transcript total $1,654.25. Thus, the total allowable charge for deposition and trial transcripts is $29,168.99.[3]

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[3] The $32,128.24 requested minus $1,305 and $1,654.25 in ASCII diskette charges for depositions and trial, respectively.

B. Copying Costs

Defendants' contention that Uniroyal is not entitled to recover costs for copies of documents made during discovery is made without citation to authority or persuasive argument. Defendants benefited during discovery because Uniroyal did its own copying rather than have defendants do it. These charges are recoverable under Section 1920(4) and were reasonably priced at 15 cents per page.

Defendants' contention that there are duplicative charges related to documents used at trial is unfounded. Some of the copies were included in the trial binders given to the jury. Other documents were listed on the pretrial order and available in court. When the second documents were tendered to the jury, additional photocopying was required. Thus, the charges were not duplicative.

Due to the complexity of the issues, the demonstrative aids, which were often enlargements of exhibits already in the hands of the jury, were necessary. Having "blown up" charts allowed the witnesses and attorneys to guide the jurors' attention to the appropriate area of the exhibits and were clearly helpful to their understanding of the case.

C. Subpoena of Bank Documents

The costs required to subpoena bank documents were necessary for Uniroyal to prove its RICO and Illinois Consumer Fraud Act claims. The subpoenaed documents enabled Uniroyal to prove that Shafiq and Hauper engaged in a pattern of racketeering by submitting false financial statements and to prove that Uniroyal was injured by extending letters of credit to Mutual Trading Corporation in reliance on false information in the finan-

cial statements sent to the banks. Thus, these charges were necessary.

D. Computerized Legal Research Costs

Computerized legal research is a task generally performed by attorneys, paralegals and law clerks. It is a cost incident to attorneys' fees. *E.E.O.C. v. Sears Roebuck and Co.*, 111 F.R.D. 385, 394 (N.D. Ill. 1986). Because it is a tool to make more efficient use of an attorney's time, charges for it are really expenses associated with attorneys' fees. *Haroco, Inc. v. American National Bank & Trust Co. of Chicago*, 1994 WL 569451 (7th Cir. Oct. 19, 1994). Consequently, while Uniroyal's request is not allowable as a cost, it is allowable as part of the attorneys' fees. Accordingly, the Bill of Costs must be reduced by $4,147.52 and the Petition for Attorneys' Fees increased by the same amount.

Uniroyal is entitled to $45,966.37 in costs.

Conclusion

For the reasons stated, Uniroyal is entitled to $1,402,065.76 in attorneys' fees and $45,966.37 in costs.

ENTER ORDER:

/s/ Elaine E. Bucklo
ELAINE E. BUCKLO
United States District Judge

Dated: October 31, 1994

APPENDIX B

ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

815 ILCS 505/10a. Actions for damages

(a) Any person who suffers damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual damages or any other relief which the court deems proper. Proof of a public injury, a pattern, or an effect on consumers generally shall not be required. . . .

(c) Except as provided in subsection (f) of this Section, in any action brought by a person under this Section, the Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party. . . .